# Communiqué

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A review of materials available from the Legal Studies Department

# *PRESIDENT'S REPORT*

## Forces of change present challenge to the profession

In form and in substance, the practice of law is beset by forces of change. Some are revolutionary in nature. The impact technology has and will continue to have on how we practise is both profound and far reaching. It seems that new rights and responsibilities emerge in some area of law almost monthly. In Alberta, a lawyer practises out of his van. Real estate law, apparently. Multi-Disciplinary Partnerships - the professional services' answer to one stop shopping is likely coming to a neighbourhood near you in the not too distant future.

Individually and collectively these changes present great challenges to both the legal profession and its licencing body. A profession based on tradition and history now requires flexibility and adaptability if we are to continue to be relevant.

Added to this, however, is the fact that the environment within which the profession functions presents some troubling and difficult to address problems. Public understanding and respect for the justice system are at an all time low. At the same time that enormous gains are being made in so many areas, such as restorative justice, community involvement in sentencing, mediation and family support in family law, the system and all of its players are often accused of being out of touch or even out of control.

It is important to remember, of course, that noise level is not necessarily a quantitative measurement, and that lack of consensus is a hallmark of the soundbite world we live in. Nonetheless all of this is troubling. How it can be addressed is a very difficult questions. That it must be addressed is clear.

A basic tenet by which lawyers and courts live is that justice must not only be done, but be seen to be done. We can be satisfies that our system is as good or better than any in the world. Our challenge is to ensure that it is seen that way.

# *Life Benchers*

President Colleen Suche, Q.C., awarded two Life Bencher Certificates at the April 16th Benchers' meeting. **Brock Lee, Q.C.**, was first elected a Bencher in the Central Electoral District in 1988. He has served on the Complaints Investigation, Discipline, Professional Liability Claims Fund, Constitution and Practice and Ethics Committees and represented the Law Society of Manitoba on the national committee dealing with the inter-jurisdictional practice of law.

**Rocky Pollack, Q.C.**, was first elected a Bencher in 1990 the Winnipeg Electoral District. Rocky has been a member of the Discipline, Reimbursement Claims Fund, Competence and Complaints Investigation Committees and represented the Law Society of Manitoba this year on the Federation of Law Societies' Legal Aid Liaison Committee.

# *BENCHER ELECTION RESULTS* - May 6, 1998

Winnipeg Electoral District
Central Electoral District
Dauphin Electoral District
Eastern Electoral District
Western Electoral District
Northern Electoral District

**City of Winnipeg Electoral District**

| NAME | NO. OF VOTES | |
|---|---|---|
| GREEN, Q.C., Sidney | 457 | ELECTED |
| FINKBEINER, Q.C., Douglas E. | 393 | ELECTED |
| SMORANG, Q.C., Garth H. | 352 | ELECTED |
| YARD, Q.C.,Douglas D. | 333 | ELECTED |
| WRIGHT, Campbell G. | 324 | ELECTED |
| RILEY, G.Patrick | 314 | ELECTED |
| PETERS, Herbert J. | 313 | ELECTED |
| HAIGHT, William G. | 312 | ELECTED |
| KILLEEN, Timothy J. | 311 | ELECTED |
| LEONOFF, Q.C., Heather S. | 308 | ELECTED |
| SPIVAK, Lori | 279 | |
| JENSEN, Paul L. | 274 | |
| BRETT, Paul | 267 | |
| MILLER, Q.C., Donna J. | 265 | |
| BEDFORD, Douglas A. | 238 | |
| DOUGLAS, Donald G. | 233 | |
| LEIBL, Q.C., Ellen P. | 228 | |
| GORLICK, Q.C., Celia Ellen | 226 | |
| HEDLEY, James W. | 221 | |
| KRAUSE, Renate C. | 207 | |
| THOMSON, Michael A. | 162 | |
| SMYTH, Randolph, G. | 100 | |
| LINCOLN, Ingrid | 98 | |
| BOTAN, Allan, M.G. | 74 | |
| PARASHIN, Robert P. | 65 | |
| MACIVER, John A. | 45 | |
| LAPLUME, John A. | 37 | |

**Eastern Electoral District**

| NAME | NO. OF VOTES | |
|---|---|---|
| WASEL, Lewis, D. | 13 | ELECTED |
| VAN DER KRABBEN, Jon | 9 | |
| PLETT, Q.C., Delbert F. | 7 | |
| COLE, Q.C., Peter J.E. | 4 | |

**Central Electoral District**

| | |
|---|---|
| Christianson, Bjorn, Q.C. | ACCLAMATION |

**Western Electoral District**

| | |
|---|---|
| Johnston, William R. | ACCLAMATION |
| Riedel, Q.C. Wolfgang W. | ACCLAMATION |

**Dauphin Electoral District**

| | |
|---|---|
| Semchuk, Alan J. | ACCLAMATION |

**Northern Electoral District**

| NAME | NO. OF VOTES | |
|---|---|---|
| BATES, Gordon J. | 14 | ELECTED |
| BAUMAN, Gregory L. | 11 | |

There were 1707 names on the voting list. The number of ballots cast was 960 of which 8 were rejected for the following reasons:

Four (4) incomplete voting declaration or no voting declaration; Four (4) arrived late

# *Why the Building Isn't Orange*

## Allan Fineblit, Chief Executive Officer

A week before I started this job, a Bencher took me to lunch…well actually I paid, but good advice doesn't come

cheap. He told me I had all the power at the Law Society. I thought to myself "wow, I'm going to paint the building orange".

When I got here and began to order paint, they handed me a document called "Executive Limitations". This document is nine pages long and contains the parameters that the Benchers have set for me. There are also two pages describing how the Benchers will monitor my performance.

Most of the limitations are pretty ordinary. I have to take steps to ensure our assets are protected. I can't allow reserves to go below or above established limits. I can't pay staff more than market rates. All together, however, this little booklet presented a considerable obstacle to the unbridled power my friend had promised.

After careful study, however, I was confident that there was no limitation on building colour. I made the mistake of mentioning this to one of my co-workers, who steered me to page 1, subclause 2 which says I shall not conduct myself in an undignified way. I think that double negative means that I have to be dignified. I asked one of our esteemed General Counsel for a legal interpretation of that clause and he told me that it clearly means "keep it green". Progress is sometimes slow.

I blame it on a guy named John Carver. Mr. Carver made a lot of money with a pretty simple idea. Boards should decide where they want to be and managers should be responsible for getting them there. The way they get there is pretty much up to the manager (which is why my friend says I have the power).

So why would smart people pay Mr. Carver big bucks for what sounds an awful lot like common sense? Just think about the way you raise your kids. You set the rules and expect them to find ways to make those rules work. So how come this Sunday morning I followed a trail of muddy footprints to an open fridge occupied by a munchkin wearing my freshly laundered white shirt and eating a pizza pop?

What got Mr. Carver his Mercedes was developing the tools to make a common sense model of governance actually work in practice. There are two key parts to his little package of goodies. The executive limitations (remember those nine pages of rules that kept the building green) and the monitoring tools.

Take the budget. (Notice how I resisted adding "please" out of respect for my recently departed hero, Henny Youngman.) I get to set the Law Society budget. At first blush, this seems like a lot of responsibility for an unelected bureaucrat. But think about it carefully. Do you want 43 Benchers (as they then were) sitting around debating whether we should install new filters in the furnace this year? So instead of deciding which photocopier to lease, Benchers tell me where they want the Law Society to be (Carver calls these "ends") and impose quite a few limits on the means I can use to get there.

These limits say that if I want to give someone a raise, I better be darn sure that we are not paying more than the market rate. And not only that, but I better consider the impact of that raise on the annual levy because another executive limitation limits how much I can increase it from year to year and yet another limits how much I can increase it over five years and yet another requires all of this to be done in the context of a multi-year fiscal plan.

There are in fact 11 executive limitations dealing specifically with budgeting and seven more that deal with the general financial condition of the Society.

Carver also developed a system for boards to monitor the performance of the Chief Executive Officer to assess whether the ends are being achieved and limitations followed. For example, in setting the 1999/2000 budget, the monitoring report noted that it was not prepared in the context of a multi-year fiscal plan. This will have to be fixed or the Benchers will give me the boot.

The Law Society is pretty new at this governance model. It's certainly not magic and far from perfect. Not everyone likes it. I've only worked with it for a few months, so for me it's too early to say…except for the undignified part which is obviously proving to be a real struggle for someone whose hero is Henny Youngman.

# Bencher Bullets

The following are some of the things that happened at the April 16th Benchers' meeting:

- The Benchers welcomed Charlie Curtis, former Deputy Minister of Finance, who has been appointed a lay Bencher of the Law Society.
- The epic struggle with a proposed **Benchers Code of Conduct** continued. Progress was made but it remains a work in progress;
- The Benchers approved in principle a report of the **Special Committee on Legal Aid** chaired by Don Douglas. The report examined the impact of low tariffs on the quality of service lawyers provide to Legal Aid clients. While strongly affirming the responsibility of lawyers to provide conscientious, diligent and efficient services to all clients, the report recognized a role for the Law Society to work in partnership with other interested parties in developing mentoring programs and targeted Continuing Legal Education to assist junior lawyers with their Legal Aid caseloads;
- The **Complaints Investigation Committee** recommended several minor rule changes which were approved by Benchers, including amending Rules 129(1)(b) and 134.1(2) which allow the CEO to approve a change in location of trust records or an outside lawyer signing trust cheques. Amendments to Rule 144 regarding bankruptcies were approved which will require a bankrupt member to provide an undertaking not to sign trust cheques (the Complaints Investigation Committee can waive that requirement if it will create undue hardship) and will permit the Complaints Investigation Committee, where it deems it appropriate, to require a personal appearance by a bankrupt member;
- The Benchers approved new "ends" recommended by the **Equity Committee** and added three new executive limitations dealing specifically with equity issues. The executive limitations require the CEO to make all reasonable efforts to identify, report and remove systemic barriers to both entry to the profession and practising within the profession;
- A **Nominating Committee** was appointed consisting of John Neufeld, Q.C., Colleen Suche, Q.C, Doug Finkbeiner, Q.C., Al Semchuk, Renate Krause, Doug Bedford and Sandra Phillips. Their job will be to nominate candidates for the Vice-President and to recommend the committee membership. The Benchers also approved rule changes adjusting the size of committees to reflect the reduced number of Benchers.

## *Miscellaneous Notices*

- Notice is hereby given that a **meeting of the Benchers** of the Law Society of Manitoba will be held on **Thursday, May 28, 1998 at 12:30 p.m.** in the Society's Boardroom, 219 Kennedy Street, Winnipeg, Manitoba. Members of the Society are encouraged to attend and to participate in the deliberations of the governing body.
- Pursuant to Section 47 of *The Law Society Act,* a lawyer is entitled to charge interest on unpaid fees, charges or disbursements where the lawyer and client have so agreed. Such interest is calculated from a date that is at least one month after the date the bill is delivered to the client. The rate of interest that may be charged shall not exceed the rate established under Section 161 of the *Income Tax Act* (Canada) on the date the bill is delivered. **The interest rate effective for the period April 1, 1998 to June 30, 1998 is 9%.**
- The International Bar Association invites French speaking lawyers to work in Rwanda with the **Avocats Sans Frontiéres**. For more information contact Pat Bourbonnais at the Law Society at 942-5571.
- Nominations are invited for the **CBA 1998 Bertha Wilson Touchstone Award** presented annually to a woman who has excelled in promoting equality in Canada. For more information contact Heather Nowlan at 1-800-267-8860.
- Mr. Justice Alan MacInnes, co-Chair of the Case Management Committee, invites the profession to a meeting to discuss the proposed **Case Management Rules for the Court of Queen's Bench (General Division) on Friday, May 22, 1998 at 12:15 p.m. in the Law Society's classroom.** The purpose of the meeting is to consult with and obtain input from the profession regarding the proposed draft rules. **Lunch can be ordered at a cost of $6.00 by calling the Manitoba Bar Association's RSVP line at 943-5475 by May 20th and must be paid for in advance or by cash at the meeting.**

- The International Bar Association is holding its 27th Biennial Conference at the Vancouver Trade and Convention Centre September 13 to 18, 1998. The conference will include working programs on Business Law, General Practice, and Energy and Natural Resources Law. Lawyers from the IBA's 183-country membership are expected to attend. For more information, contact the Canadian Bar Association at 1-800-267-8860.

# *AN IMPORTANT NOTICE ABOUT INSURANCE CLAIMS OVER $1 MILLION*

## Excess Insurance 1998/1999 Policy Year

The mandatory professional liability coverage provided by The Law Society of Manitoba provides coverage to insured members of one million dollars per claim with an aggregate coverage limit of two million dollars per lawyer per year. Excess insurance, providing additional coverage of up to four million dollars per claim, written by the Canadian Lawyers Insurance Association ("CLIA"), can be purchased through The Law Society of Manitoba. CLIA's standard Excess Policy will also provide "drop down" protection in the event of exhaustion of the two million dollar aggregate coverage under the mandatory insurance.

The new policy period for the additional coverage, or "excess insurance" begins July 1, 1998.

The Canadian Lawyers Insurance Association has been offering excess insurance to the legal profession in Manitoba since 1988. This year, CLIA will again issue a "retro-credit" to those law firms who have continuously purchased their excess insurance through CLIA. The retro-credit will reduce the excess insurance premium payable by eligible firms. For more information on excess insurance or to obtain a CLIA Excess Insurance Application, please contact Bonnie Harvey of our office at 942-5571.

**CLIA EXCESS INSURANCE SCHEDULE**

| Limit of Liability (Per Lawyer) | Premium Rate |
|---|---|
| $1,000,000 any one Occurrence<br>$2,000.000 any one Policy Period | $325. |
| $2,000,000 an one Occurrence<br>$4,000,000 any one Policy Period | $450. |
| $3,000,000 any one Occurrence<br>$6,000,000 any one Policy Period | $575. |
| $4,000,000 any one Occurrence<br>$8,000,000 any one Policy Period | $675. |

# *AN IMPORTANT NOTICE ABOUT YOUR PROFESSIONAL LIABILITY INSURANCE*

### Expiration of the Policy Year

Each year at this time, we publish a notice to the profession advising all that coverage under the current Lawyers Professional Liability Insurance Policy expires on July 1 at 12:01 a.m., to be replaced by a new Policy of Insurance. Upon expiry of the current 1997/1998 Policy, the Insurer shall be free from liability for all new claims and possible claims against members, except where the member has given written notice to the Insurer, during the 1997/1998 Policy period, of any circumstance which might subsequently give rise to a claim, in which case any claim so made will be deemed to be a claim under the 1997/1998 Policy.

The 1998/1999 Policy will not provide coverage for any occurrence which occurred prior to July 1, 1998, if, as of July 1, 1998, the Insured knew or could have reasonably foreseen that such occurrence would likely be the basis of a claim.

If you are aware therefore, of any circumstance which would likely subsequently give rise to a claim against you, you must give written notice of such potential claim to the Director of Insurance of The Law Society of Manitoba prior to July 1, 1998, the Policy expiry date. Such notice can be given by completing a Professional Liability Insurance Claims Reporting form. Please contact The Law Society Professional Liability Claims Fund Program at 942-5571 to obtain Claims Reporting forms.

# MEMBERSHIP CHANGES

The following memebrs have voluntarily changed their status as indicated on the dates shown:

**Practising to Non-Practising:**

April 1, 1998 Mary-Jane Bennett
April 1, 1998 Mary Ellen Cavett
April 1, 1998 Steven J. Kroft
April 1, 1998 Tanya L. Brothers
April 1, 1998 John R. Milne
April 1, 1998 C. Mervin Ozirny
April 1 1998 Benjamin Gerstein
April 1, 1998 Suzette J. Narbonne
April 1, 1998 R. James Sedgwick
April 1, 1998 David D. Roy
April 1, 1998 Bernard Toews
April 1, 1998 Peter J. Wiebe
May 1, 1998 Barbara R. Hochman
April 1, 1998 Simon J. Helm
April 1, 1998 Jasjit K. Dhillon
April 1, 1998 F. Marilyn McGonigal
April 1, 1998 Dorothy V. Pedlar
April 1, 1998 John L. Bowles
April 1, 1998 Louise A. Lamb, Q.C.
April 1, 1998 Renee D. Szewczyk
April 1, 1998 Indra L. Maharaj
April 1, 1998 R. Gregory Yost
April 1, 1998 Greg R.S. Rodin
April 1, 1998 Cory J. Lewis
April 1, 1998 Joel H. Kay

**Non-Practising to Practising:**

March 1, 1998 Anthony J. Kavanagh
April 1, 1998 Andrew K. Silk
May 1, 1998 John M. Ginnell, Q.C.
March 2, 1998 J. Patrick Riley
April 1, 1998 Lynne R. Kohm

**Inactive to Practising:**

April 1, 1998 Alexander J. Kocsis

**Practising to Inactive:**

March 1, 1998 Elizabeth R. Sellick
April 1, 1998 Stephen D. Lerner
April 1, 1998 Dennis H. Ringstrom
April 1, 1998 Donald C.L. Nyznik
April 1, 1998 Sherwin M. Lyman, Q.C.
April 1, 1998 Robert L. Fisher
April 1, 1998 Bruce W. Syme
April 1, 1998 Scott B. Ransome
April 15, 1998 Brent D. Stewart
March 1, 1998 Theresa M. Hill
April 1, 1998 Elizabeth E. Murray
April 1, 1998 Maria E. Kucher
April 1, 1998 Bradley J. Favel
April 1, 1998 J. Brent Mills
April 1, 1998 Mark Freed
April 1, 1998 J. Kenneth Beatty
April 1, 1998 Ramona K. Jozsa
May 1, 1998 Cory L. Pollock

**Transfer from Another Province**

**Jessica Jerusha Benjamin** of the Law Society of Alberta was called to the Bar of Manitoba on **March 27, 1998** and is now entitled to practise law in this jurisdiction, having fulfilled the requirements of *Rule 99*.

**Called to the Bar:**
The following were called to the Bar of Manitoba on **May 1, 1998** after having successfully completed the requirements of the bar admission course and articling program:

David R. Banman
Jody S. Langhan
Nico G.J. Breed
Nancy K. Koppang
Paul S. Claire

**DIRECTOR OR OFFICER ?**

# YOU ARE *EXPOSED*

As you all know, the Lawyers Professional Liability Insurance Group Policy does not provide insurance coverage to lawyers are acting in the capacity of a Director or Officer of a corporation, association, or a variety of other enterprises defined under the Policy. If you are sued as a member of a Board of Directors, the Professional Liability Claims Fund will not cover you. No defence will be provided and no indemnity will be paid. Unless your Board maintains adequate Directors and Officers insurance on your behalf, you are "bare".

If you sit on a community board, a client's board or on the board of a charitable organization, you may wish to consider whether you should purchase Outside Directors and Officers Liability Insurance. You can obtain more information about Directors and Officers Insurance through your private insurance broker or, contact the Canadian Bar Insurance Association (CBIA) or Joe Tontini, Dion Durrell & Associates 1-(406)-408-5287 about the CBIA's revamped Outside Directorship Liability (ODL) Insurance Program which provides insurance indemnifying lawyers who sit as Directors or serve as Officers. The CBIA's ODL insurance program indemnifies lawyers who sit as Directors on Boards outside their partnership or employment situation. This insurance provides coverage in the event that the lawyer who is a Director is not totally indemnified by the corporation, and/or other insurance is not available to indemnify Directors.

# *Y2K - The Year 2000 Nightmare*

## Tana Christianson, Director of Insurance

By now, most of you have been bombarded with articles in the media on the technological apocalypse that will be unleashed on the world of computers one minute after midnight, 2000. But have you thought about how the event will actually impact on your practice and professional life?

The Law Society has concerns about the year 2000 from two different perspectives: first, how will it affect our professional liability insurance claims experience and secondly, to what extent might it impair the day-to-day operations of Manitoba lawyers and law firms?

### The Perspective of the Professional Liability Claims Fund

The Professional Liability Claims Fund has spent some time considering the matter. The claims management software and database used to record all of the details of our insurance program has a serious year 2000 problem. Our computer software program, developed twelve years ago, doesn't recognize the year 2000. As in many computer programs, each calendar year is represented by two digits rather than four. When the digits "00" are entered, the computer program reads this to indicate the year 1900, rather than 2000, with sometimes amusing results. For instance, if you were to enter the digits "00" as the year in which an error occurred, the computer program tells you "lawyer was not born at the date of error". In addition, there are many hidden applications where the problem is not obvious. Because there are thousands of lines of code in the computer program which would have to be re-written to accommodate the year 2000, Manitoba's Professional Liability Claims Fund and the insurance programs of other Law Societies using the same computer program have contracted with a consultant to have the entire program redeveloped in a more modern computer language, compliant with the year 2000.

Our computer program was developed in 1986. However, even if the hardware and software in your office were recently acquired, you can't be confident that you don't have a year 2000 problem. Recently, another professional told the story of how his firm, a technologically-advanced office, was asked by a client to provide an assurance that the firm's technology was year 2000-compliant. Feeling confident that its systems and software would pass the test since the firm had acquired all new PCs and all new software less than two years before, the firm performed a year 2000 audit of the software and hardware. Much to everyone's surprise, two of the 30 PCs acquired just two

years previous were not year 2000-compliant.

If you haven't already done so, you should have your firm's computer system audited to ensure that it is, in fact, year 2000 compliant. It is recommended, though, that you test your software on a stand-alone system to avoid the risk of destroying or contaminating data, or that you contract with a competent computer consultant to audit your systems for you.

The Professional Liability Claims Fund has also begun considering what impact year 2000 problems experienced by insured lawyers and their clients will have on the Fund's loss experience.

How, you may ask, would a year 2000 problem lead to an insurance claim? We anticipate that there will be some claims stemming from lawyers' failure to advise clients purchasing businesses or computer-related assets to perform due diligence audits of year 2000 problems or to seek representations, warranties or indemnities on year 2000 issues. It is difficult to predict how many claims might arise out of such transactions. Lawyers acting for purchasers of computer hardware or software or businesses which use computers should be especially mindful of the year 2000 situation when advising those clients.

In addition, we expect that there will be claims for missed limitations, missed filing dates, overlooked PPR renewal dates and the like, when computerized diarization or "bring forward" systems which are not year 2000-compliant fail. There may also be some minor claims as a consequence of lawyers missing court appearances and defaulting on other commitments when their computer-based schedulers crash on January 1, 2000.

Our actuaries have concluded that it is too soon to determine how year 2000 problems will affect insurance rates. At a recent Advisory Board meeting, CLIA determined that it would not exclude year 2000-related claims from insurance coverage. While the consensus is that lawyers' Professional Liability Insurance programs will cover year 2000 problems - at least for the first $1 million of coverage, there are rumors that the commercial insurance industry will either exclude year 2000 problems entirely from coverage or provide limited coverage to those organizations who can satisfy the insurer that they have audited their computer systems to ensure that they are year 2000 compliant. It has also been suggested that commercial insurers may deny business interruption coverage for businesses interrupted due to the year 2000 problems of their suppliers or other third parties upon whose services they depend.

### The View from the Auditors' Office

In comparison to other organizations, law firms may not be particularly vulnerable to Y2K problems. That said, lawyers can't ignore the potential implications that the year 2000 may have on their practices.

Like the Professional Liability Claims Fund's system, there are some law firms operating with custom-written software. For these firms, the year 2000 may cause the most difficulties and technical assistance may be required. However, the Y2K problem applies to practices of all sizes, and is not restricted to old computer systems and custom-written software. Practitioners should not assume that their software is Y2K compliant just because it is a fairly new "off the shelf" package. A recent article by Jason Alexander (November 1997-National) indicates that many of the packages commonly used by law firms (Microsoft Word, Excel, Access, PowerPoint, Corel WordPerfect, Quattro Pro, Paradox and Presentation are examples named) should be Y2K compliant. The Law Society has also been advised from one software company that PCLawPro and PCLawJr. (both for Windows 95) are probably Y2K compliant. They further provided that SoloPro (DOS), PCLaw (DOS), PCLAWJR. (DOS and Windows) should be compliant by the end of 1998. The standard advice is to contact your software vendor or developer to find out more information (e.g. will an updated Y2K compliant version be available?). Regardless of what you have heard about a particular product, be it hardware or software, *it is absolutely critical to test compliance in your own office environment*.

Many articles written on this topic emphasize the urgency of taking appropriate measures now. This means devoting the necessary resources to the Y2K problem before it is too late. If it will ultimately be necessary to replace your existing software, think of the time that will be required to research other software alternatives,

implement the new software, retrain staff, and test the system prior to January 1, 2000. Complicating the situation is the fact that problems may start to occur well in advance of the year 2000. Specifically, the year 1999 will cause a problem for a number of systems. There are two issues here. First, the digits "99" were often used in the date field to identify test data (which was not to be processed as part of the regular computer operations). If you have a program which uses this logic, you may be unable to process any data once January 1, 1999 is reached. Secondly, the date 9/9/99 was frequently designated as the expiry date for information which had archival value. In other words, if an organization wished to keep information to "infinity", the date 9/9/99 would be used. Naturally, information identified with this date will be lost once September 9, 1999 arrives.

Since problems may occur with any date-dependent hardware devices and any software that calculates, compares, or sorts information using date fields, a firm's computerized accounting information is especially at risk. Of particular concern are law firm's trust account records.

As a precautionary measure, all firms should have a contingency plan in place. To preserve trust records, ensure that a hardcopy of each client trust account (showing transactions from inception to completion) is produced as close to the 1999 year end as possible (but, of course, before January 1, 2000). Periodic printouts of all client trust accounts would also be prudent practice; at minimum, firms should produce hardcopies just prior to January 1, 1999 and September 9, 1999. Further, lawyers should be particularly diligent to see that hardcopy records as required under Law Society Rules are run off each month end. Then, if a firm's system "crashes" and the firm is forced to use a manual system for an interim period, the re-construction of data will be minimal.

The same concept applies to the general records of a firm, including accounts receivable, general bank accounts and time and billing information. Firms should develop the habit of printing off hardcopies of all important data on a regular basis.

Finally, when assessing Y2K risk in a law office, don't forget the telephone systems, e-mail and security systems. Each may have its own Y2K "bug".

Members are encouraged to start planning for the year 2000 immediately and to keep abreast of the issue through the many sources available. One useful guide entitled "Potential Implications of the Year 2000" may be downloaded at no charge from the CICA (Canadian Institute of Chartered Accountants) website, at the address www.cica.ca. Alternatively, a copy of the guide may be obtained from the CICA offices (1-800-268-3793) at a cost of $10.00. There are of course many other sources available.

It is important to start taking action now. As so many others have pointed out . . . this is one deadline that can't be extended.

## *Our Thanks*

The Competence Committee wishes to express its sincere thanks to the many members who volunteered their time to conduct practice and management audit reviews and to prepare the necessary reports for the Committee's consideration. The Committee recognizes that the practice of law is demanding and appreciates the invaluable contribution of these a practitioners' time.

Chapter 15 of The Code of Professional Conduct states that: "The lawyer should assist in maintaining the integrity of the profession and should participate in its activities." The Committee's volunteers have done just that!

Many thanks to the following:

| | | |
|---|---|---|
| Lori Ainemer | Laurie Allen, Q.C. | Gerald Arron |
| Doug Bedford | Victor Bellay | Anthony Dalmyn |
| Richard Deeley, Q.C. | Lori Douglas | Keith Ferbers |
| Jeffrey Harris | John Jones | Donald Knight, Q.C. |
| Rocky Kravetsky | Ingrid Lincoln | John Neufeld, Q.C. |
| Ross Nugent, Q.C. | Kerry Pearlman | David Phillips |
| Arthur Rich, Q.C. | Mark Schulman, Q.C. | Saul Simmonds |
| Marta Smith | Reeh Taylor, Q.C. | Robert Tyler |

The Law Society of Manitoba also wishes to thank the following members who have been involved in fee arbitrations as a member of the Legal Fees Advisory Committee within the past year:

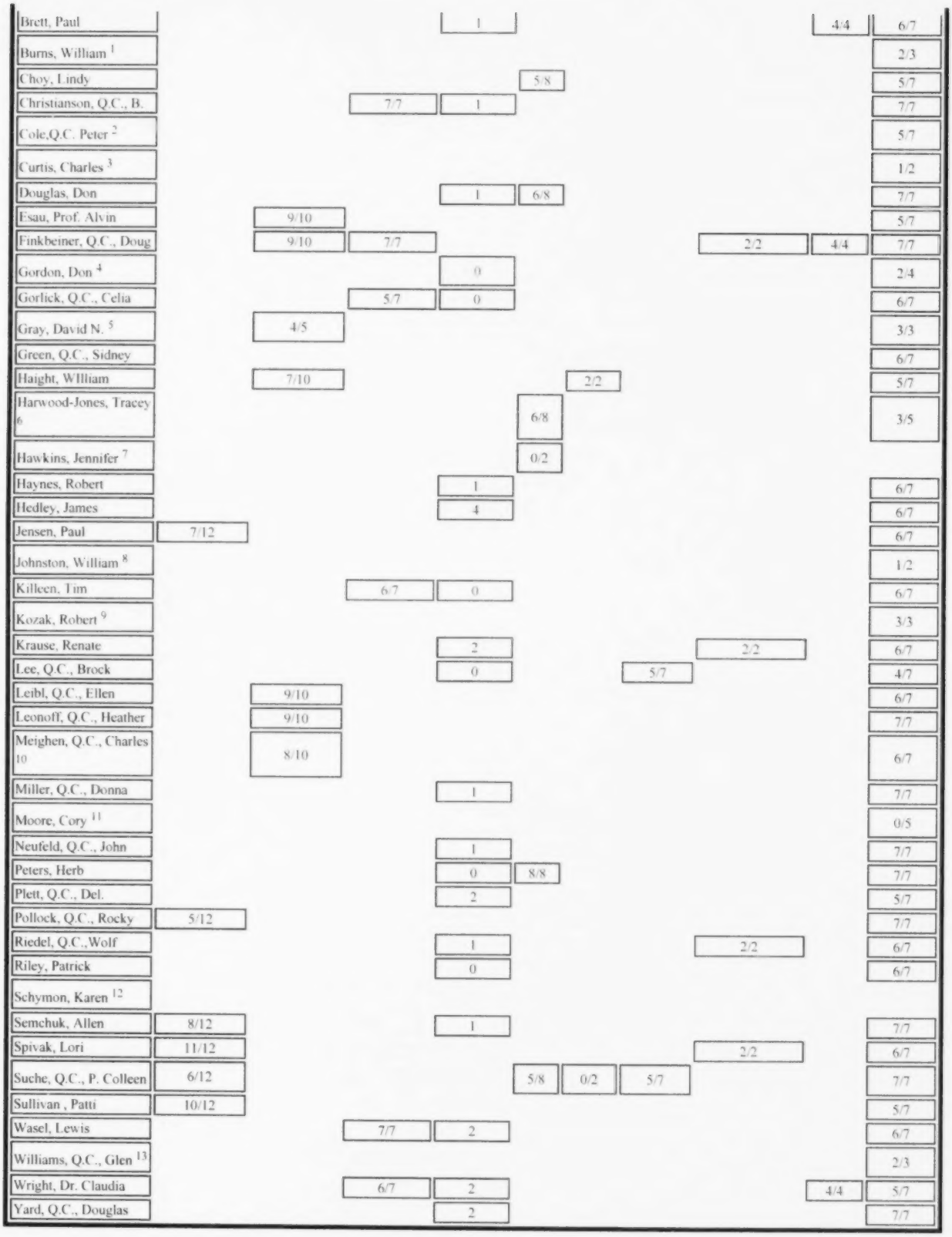
| | | |
|---|---|---|
| Hugh Adams | Laurie Allen, Q.C. | Douglas Bedford |
| Derek Booth | Donald Brock | George Chapman, Q.C. |
| Lori Douglas | William Doyle | James Fielder |
| Len Fishman | Raymond Flett, Q.C. | Elliott Goszer |
| David Gray | Maria Halkewycz | Richard Handlon |
| Jeff Harris | Wayne Jackiew | Guy Joubert |
| Fay-Lynn Katz | David King | Jack A. King |
| Cyril Labman | Melanie Lautt | Sam Malamud |
| Al R. McGregor, Q.C. | Chrys Pappas, Q.C. | Charles Phelan, Q.C. |
| Jay Prober | Marianne Rivoalen | Colon Settle, Q.C. |
| David Skwark | Rheal Teffaine, Q.C. | Howard Tennenhouse |
| Stephen Vincent | D.A.Yanofsky, Q.C. | Norman Yusim |

Members of the public are appreciative of the opportunity to have fees reviewed without having to proceed to court. This process would not be possible without the generous donation of both time and expertise from our volunteer members.

# *Bencher and Committee Meeting Attendance*

## June 1997 to April 1998

| | Complaints B | Complaints A | Competence | Discipline ◆ | A & E | PLCF | Practice & Ethics | Reimbursement | Equity | Benchers |
|---|---|---|---|---|---|---|---|---|---|---|
| Bates, Gordon | | | | 1 | | 2/2 | | | | 4/7 |
| Bauman, Greg | | | | 0 | | | | | | 7/7 |
| Bedford, Douglas | | | | 0 | | 1/2 | 6/7 | | | 7/7 |
| Bellay, Victor | | | | 0 | | | | | 1/4 | 6/7 |
| Braid, Q.C., Art | | | | | 8/8 | | | | | 6/7 |
| | | | | | | | | | | |



| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Brett, Paul | | | 1 | | | | 4/4 | 6/7 |
| Burns, William [1] | | | | | | | | 2/3 |
| Choy, Lindy | | | | 5/8 | | | | 5/7 |
| Christianson, Q.C., B. | | 7/7 | 1 | | | | | 7/7 |
| Cole,Q.C. Peter [2] | | | | | | | | 5/7 |
| Curtis, Charles [3] | | | | | | | | 1/2 |
| Douglas, Don | | | 1 | 6/8 | | | | 7/7 |
| Esau, Prof. Alvin | 9/10 | | | | | | | 5/7 |
| Finkbeiner, Q.C., Doug | 9/10 | 7/7 | | | | 2/2 | 4/4 | 7/7 |
| Gordon, Don [4] | | | 0 | | | | | 2/4 |
| Gorlick, Q.C., Celia | | 5/7 | 0 | | | | | 6/7 |
| Gray, David N. [5] | 4/5 | | | | | | | 3/3 |
| Green, Q.C., Sidney | | | | | | | | 6/7 |
| Haight, William | 7/10 | | | 2/2 | | | | 5/7 |
| Harwood-Jones, Tracey [6] | | | | 6/8 | | | | 3/5 |
| Hawkins, Jennifer [7] | | | | 0/2 | | | | |
| Haynes, Robert | | | 1 | | | | | 6/7 |
| Hedley, James | | | 4 | | | | | 6/7 |
| Jensen, Paul | 7/12 | | | | | | | 6/7 |
| Johnston, William [8] | | | | | | | | 1/2 |
| Killeen, Tim | | 6/7 | 0 | | | | | 6/7 |
| Kozak, Robert [9] | | | | | | | | 3/3 |
| Krause, Renate | | | 2 | | | 2/2 | | 6/7 |
| Lee, Q.C., Brock | | | 0 | | 5/7 | | | 4/7 |
| Leibl, Q.C., Ellen | 9/10 | | | | | | | 6/7 |
| Leonoff, Q.C., Heather | 9/10 | | | | | | | 7/7 |
| Meighen, Q.C., Charles [10] | 8/10 | | | | | | | 6/7 |
| Miller, Q.C., Donna | | | 1 | | | | | 7/7 |
| Moore, Cory [11] | | | | | | | | 0/5 |
| Neufeld, Q.C., John | | | 1 | | | | | 7/7 |
| Peters, Herb | | | 0 | 8/8 | | | | 7/7 |
| Plett, Q.C., Del. | | | 2 | | | | | 5/7 |
| Pollock, Q.C., Rocky | 5/12 | | | | | | | 7/7 |
| Riedel, Q.C.,Wolf | | | 1 | | | 2/2 | | 6/7 |
| Riley, Patrick | | | 0 | | | | | 6/7 |
| Schymon, Karen [12] | | | | | | | | |
| Semchuk, Allen | 8/12 | | 1 | | | | | 7/7 |
| Spivak, Lori | 11/12 | | | | | 2/2 | | 6/7 |
| Suche, Q.C., P. Colleen | 6/12 | | | 5/8 | 0/2 | 5/7 | | 7/7 |
| Sullivan , Patti | 10/12 | | | | | | | 5/7 |
| Wasel, Lewis | | 7/7 | 2 | | | | | 6/7 |
| Williams, Q.C., Glen [13] | | | | | | | | 2/3 |
| Wright, Dr. Claudia | | 6/7 | 2 | | | | 4/4 | 5/7 |
| Yard, Q.C., Douglas | | | 2 | | | | | 7/7 |

There were a total of 7 Benchers meetings during the reporting period of June, 1997 to December, 1997.

◆ reflects number of hearing attended

Key X/Y: X = number of meetings attended; Y = number of meetings held

1. Became a Bencher December 1997
1. Became a Bencher September 1997
2. Became a Bencher April 1998
3. Ceased to be a Bencher November 1997
4. Ceased to be a Bencher November 1997
5. Became a Bar Admission Student Bencher September 1997
6. Ceased to be a Bencher September 1997
7. Ceased to be a Bencher January 1998
8. Ceased to be a Bencher December 1997
9. Became a Bencher June 1997
10. Becmae a Bencher September 1997
11. Became a University Bencher September 1997
12. Ceased to be a Bencher September 1997

# *Unauthorized Practice of Law*

## Joe Gallagher, General Counsel

The unauthorized practice of law has become a growing concern to practitioners and Law Societies across the country. This is certainly the case in Manitoba where the Society has in the past year received complaints of non-lawyers appearing before administrative tribunals, agents appearing in Small Claims Court, individuals or businesses involved in drawing and filing documents such a mortgages and transfers of land, and non-lawyers drafting Last Wills and Testaments.

Subsection 56(l) of *The Law Society Act* ("the Act") prohibits any person who is not entitled to practice as a barrister and solicitor in the province to carry on the practice of law or for gain or reward to act as a barrister or solicitor. The Act, in subsection 56(2), outlines actions which are deemed to be carrying on the practice of law and includes the drawing, revising or settling of any document relating to real or personal property or any document for use in any judicial or extra-judicial proceedings, as well as the drafting of any Will, Deed, Power of Attorney or any document relating to the estate of any person. In such cases, the individual must be proven to be acting in expectation of a fee, gain or reward, direct or indirect. Lawyers are also prohibited from employing, in any capacity relating to the practice of law, any person who is disbarred or struck off the Rolls or who is suspended from the practice of law, except with the approval of the governing body.

There are saving provisions which allow an individual to act personally for him/herself only in a matter or proceeding to which he or she is a party and also allow a notary public to exercise the powers conferred upon notaries by law. A violation of section 56 is punishable by way of summary conviction. The Society is also authorized to bring injunctive proceedings against any person who has violated this section and is entitled to an injunction enjoining such person from practicing as a barrister and solicitor and from violating further any provision of the section.

A number of years ago, the Act was amended to allow representation by agents in certain narrow circumstances. Section 57.1 provides that a person, who has not been disbarred or suspended or has not been convicted of an indictable offence for which he or she has not been pardoned, may act as an agent on behalf of another person and provide legal advice concerning *Highway Traffic Act* offences and may act in the Provincial Court for that person, if the penalty on summary conviction does not include imprisonment and there has been no report of bodily injury.

In most cases, complaints of unauthorized practice of law made to the Society are brought to the

attention of the person complained of and the individual or business ceases the activity. This is not always the case however, and in early 1997, the Court of Queen's Bench, on application by the Society, granted an injunction to prohibit two non-lawyer agents from representing members of the *Farmers for Justice* organization in Manitoba Courts. Additionally, the Society investigated a complaint that a businessman was giving legal advice and drafting Last Wills and Testaments. This resulted in two charges of unauthorized practice of law being laid against the individual. A trial date has been set for the hearing of these charges in the fall of this year.

In response to the number of complaints and the increasing concern expressed by members of the profession, the Benchers authorized the President to strike a committee to study the issue of unauthorized practice of law in general and to report back to the Benchers. This committee is composed of Rocky L. Pollack, Q.C. as Chairperson, Lori T. Spivak, and Renate C. Krause. It is anticipated that the Committee will submit its report by December 31, 1998. Members of the profession who might have information that may assist the committee are invited to contact Joe R. Gallagher, General Counsel.

## *Title Insurance Update*

**Marilyn Billinkoff, Deputy Chief Executive Officer**

Canadian law societies are continuing to focus their activities on conveyancing and title insurance issues as they assess conveyancing practices across the country and the effect of title insurance on the services and protection provided to lenders, purchasers and on public institutions. Work at the national level is now directed at streamlining the processes involved in real estate transactions and making optimal use of modern technologies and business processes. While the entry of title insurers into the Canadian marketplace has been the catalyst for these considerations and discussions, there is now movement away from the creation of a lawyers' national title insurance product and towards use of a national Warranty/Guarantee/ Certificate of Title that provides for uniform professional standards backed by either existing law society errors and omissions funds or lawyers' title insurance products. The current vision contemplates uniform standards backed differently in various regions of the country.

Several pilot projects are underway. In Nova Scotia, consideration is being given to adapting LPIC's TitlePlus product for use in that province. Quebec notaries will be launching their own new program, a certificate of title backed by the notaries' errors and omissions fund, in several months. Representatives of the law societies of British Columbia, Alberta, Saskatchewan and Manitoba met in late March to consider whether there were enough similarities amongst the Torrens provinces to justify a regional approach to process change, which would include use of a lawyer's guarantee of title. A report recommending action has been approved by all four Western provinces and work on the project will commence shortly, with a six month target date for implementation. In Manitoba, the law society's title insurance committee has started to review Manitoba conveyancing practices and discussions are ongoing with representatives of the land titles office. Strong consideration will be given to developing recommended rules of practice for Manitoba that will allow mortgage funds to be advanced upon registration of documents.

The Federation of Law Societies' Title Insurance Steering Committee met at the end of April to begin preparation of a project plan for the creation of a national mechanism for communication between financial institutions and lawyers. The plan will be circulated to law societies within the next several months. In the interim, work will continue on the various regional projects and The Law Society of Manitoba will continue its own work locally.

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## Ellen Henry, Publications Editor

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